

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ADMIRALTY AND VICE ADMIRALTY JURISDICTION
IN ITS COMMERCIAL DIVISION**

INTERIM APPLICATION NO.4565 OF 2022

IN

COMMERCIAL ADMIRALTY SUIT NO. 1 OF 2022

ANJALI
TUSHAR
ASWALE

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Aditya Birla Finance Ltd	..Applicant/Orig.Plaintiff
Versus	
m. v. Tag 7	..Defendant
And	
Arunava Raha	..Caveator/Respondent

Ms. Shweta Sadanandan i/b Mr. Bimal Rajasekhar,
Advocates for the Plaintiff / Applicant.

Mr. Kunal Naik i/b Ram Jay Narayan, Advocates for the
Plaintiff in COMASL 8528/2023.

Ms. Nidhi Shah i/b Amir Arsiwala, Advocates for the
Liquidator.

Ms. Sneha B. Pandey i/b Motiwalla & Co, Advocates for the
Plaintiff in COMAS 50/21. (MBPT)

Mr. D. S. Choudhari, Dy. Sheriff is present.

CORAM : B. P. COLABAWALLA, J
DATE : APRIL 18, 2023

P.C.

By prayer clause (c) of the present Interim Application, the Plaintiff / Applicant seeks payment out of sale proceeds relating to the Defendant Vessel which are lying deposited with this Court, towards partial satisfaction of the decree passed in the Applicant's / Plaintiff's favour.

2 The Defendant Vessel was arrested by an order dated 30th July 2020 passed in this suit. The Defendant Vessel was thereafter sold to World System (Hong Kong) Limited on 21st June 2021 pursuant to a public auction conducted by this Court, for a sale consideration of Rs. 7,11,00,000.

3 On or about 29.06.2021 the sale consideration was deposited by the auction purchaser with the Sheriff of Mumbai and a Bill of Sale was issued in favour of the auction purchaser. The Sheriff of Mumbai subsequently transferred the sale proceeds to the Admiralty Registrar of this Court.

4 By orders dated 23rd December 2021 and 26th April 2022, amounts of Rs. 7,42,997, Rs. 4,00,000 and Rs. 2,91,060 were paid out from the sale proceeds to satisfy the claims of crew members who served on-board the Defendant Vessel.

5 Ms. Sadanandan, the learned counsel appearing for the Applicant submits that this Court, on 30th August 2022, decreed the present suit in the Applicant's favour for a sum of Rs. 55,10,94,099 with interest thereon @ 9% p.a. WEF the date of institution of the suit till payment and/ or realization. The

Applicant / Plaintiff was also awarded costs of Rs. 4,00,000.

6 Ms. Sadanandan submitted that pursuant to order dated 13th December 2022 public notices in terms of Rules 1087 and 1088 of the Bombay High Court (Original Side) Rules 1980, were issued by the Sheriff of Mumbai inviting claims against the sale proceeds of the Defendant vessel. The notice period for lodging claims against the sale proceeds of the Defendant vessel expired on 16th March 2023.

7 Ms. Pandey, the learned counsel appearing for the Plaintiff in COMAS 50/21 submits that the Board of Mumbai Port Authority (“**Port**”) has filed its claim asserting a maritime lien against the sale proceeds of the Defendant Vessel for a sum of Rs.76,09,654/- (Seventy Six Lakhs Nine Thousand Six Hundred And Fifty Four only) together with interest at the rate of 15% per annum on the sum of Rs.66,64,234/- (Sixty Six Lakhs Sixty Four thousand two Hundred And Thirty Four Only) from 01/08/2021 till payment and/or realization.

8 Ms. Pandey further submits that, as of 17/04/2023 the claim of the Port including interest works out to Rs.

96,34,693/-. She states that the Port is yet to obtain a decree and the claim amount may increase. She, therefore, requests that an amount of Rs. 1,05,00,000 /-(out of the balance sale proceeds) should be retained to secure the Port's claim, pending the outcome of the suit filed by the Port. I accept this submission.

9 Mr. Naik, the learned counsel appearing for the Plaintiffs in COMASL 8528/2023 states that two crew members – Mr. Arunava Raha and Mr. Yakkal Venkata Anantha Murali Krishna (“**Crew Members**”) have jointly filed claims asserting a maritime lien against the sale proceeds of the Defendant Vessel aggregating (i) Rs. 4,36,322 with further interest @ 12% p.a. on the principal amount of Rs. 1,91,000 WEF the date of filing of the suit till payment/ realisation; *and* (ii) Rs. 2,34,455 with further interest @ 12% p.a. on the principal amount of Rs. 56,500 WEF the date of filing of the suit till payment/ realisation. Mr. Naik further submits that, as of 18/04/2023 the claim of the Crew Members including interest works out to Rs. 6,72,812.22 . He submits that the Crew Members are yet to obtain a decree. He therefore requests that an amount aggregating Rs. 7,00,000 (out of the balance sale proceeds) should be retained to secure the Crew Members' claims, pending the outcome of the suit filed by

the Crew Members. I accept this submission.

10 Ms. Sadanandan submits that apart from COMAS
50/2021 and COMASL 8528/2023 no other suit or claim has been
filed against the sale proceeds of the Defendant Vessel. The Sheriff
of Mumbai, who is present in Court, confirms that this is correct.

11 In view of the foregoing, Ms. Sadanandan submits
that pending the outcome of Commercial Admiralty Suit No. 50 of
2021 (filed by the Port) and Commercial Admiralty Suit (L) No.
8528 of 2023 (filed by the Crew Members), the Applicant should
be permitted to withdraw the balance sale proceeds towards
partial satisfaction of its decree. She further submits that the
Applicant is willing to undertake to bring back any amounts if
directed to do so by this Court in case any claims having priority
over the Applicant's claim are filed. This undertaking is accepted.

12 Heard the learned Counsels for the parties.

13 In the present case undisputedly, the Applicant has
obtained a decree whereas the Port and Crew Members are yet to
obtain decrees. The claim of the Applicant is based on a registered

mortgage and falls under clause (b) of sub- section (1) of Section 10 of the Admiralty Act. On the other hand, the claim of the Port and Crew Members and which are in the nature of maritime liens, stand on a higher footing under clause (a) of sub-section (1) of Section 10 of the Admiralty Act.

14 The adjudication of the suits filed by the Port and Crew Members will require time and I agree with the submissions made by Ms. Sadanandan, that the Applicant, who is a decree holder, should not be required to wait indefinitely for payment-out from the sale proceeds in (partial) satisfaction of the decree passed in its favour. Thus, subject to withholding amounts referred to above to secure the claims filed by the Port and the Crew Members and in view of the undertaking extended by the Applicant, I find that there is no impediment in allowing the present Interim Application in terms of prayer clause (c) and ordering payment out to the Applicant.

15 I therefore order release of the balance sale proceeds to the Applicant – Aditya Birla Finance Limited (“**Aditya Birla**”) subject to withholding amounts to secure the claims filed by the Port and the Crew Members and subject to the Applicant /

Plaintiff undertaking to bring back such amounts as may be ordered to by this Court. Ms. Sadanandan fairly states that she has instructions to make a statement in those terms, which statement is accepted as an undertaking given to this Court.

16 In view of the foregoing, the following order is passed:

- a) The Prothonotary and Senior Master shall retain a sum of Rs. 1,05,00,000 to satisfy the decree which may be passed in favour of the Port in Commercial Admiralty Suit No. 50 of 2021.
- b) The Prothonotary and Senior Master shall retain a sum of Rs. 7,00,000 to satisfy the decree which may be passed in favour of the Crew Members in Commercial Admiralty Suit No. 8528 of 2023.
- c) After keeping aside a sum aggregating Rs. 1,12,00,000, the entire balance sale proceeds, together with interest accrued thereon, shall be released by the Prothonotary and Senior Master to Applicant / Plaintiff – Aditya Birla Finance Limited towards partial satisfaction of the decree passed in the Applicant's favour.
- d) The Applicant / Plaintiff will be at liberty to seek further payment if there is a surplus, after satisfying the decrees

which may be passed in favour of claimants ranking in priority over the Applicant / Plaintiff *or* if those claimants fail to prove their claims.

- e) The Applicant undertakes to bring back to this Court such amounts as may be ordered by this Court to meet the adjudicated claim(s) of person(s) having claims which rank in in priority above the Applicant's claim.
- f) All undertakings recorded in this order are accepted as undertaking give to the court.
- g) For the purposes of implementing this order, the Prothonotary & Senior Master will forthwith break the fixed deposits.
- h) The above Interim Application No. 4565 of 2022 accordingly stands disposed of. No order as to costs.

17 This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[B. P. COLABAWALLA, J].